

## **General terms and conditions of sale, delivery and payment**

of DWT GmbH (Druckluft-Werkzeug-Technik Gesellschaft mit beschränkter Haftung), with registered office in Germany (hereinafter referred to as "DWT") valid from 1.9.2013

for use towards

a legal entity or natural person who, upon conclusion of the contract, acts in the exercise of his commercial or independent professional activity (entrepreneur) and legal entities under public law or a special fund under public law (hereinafter referred to as "Client").

### **§ 1 Validity**

- 1.1. All offers, contracts and deliveries shall be based exclusively on the following terms and conditions; they shall also apply if no express reference is made to them in the individual case. The Terms and Conditions shall be deemed accepted at the latest by placing the order or accepting the services of DWT. It shall be agreed between the Principal and DWT upon the first conclusion of the contract that these Terms and Conditions shall also apply to all future services and contracts - including those concluded verbally or by telephone - within the framework of continuing business relations.
- 1.2. Terms and conditions of the Principal or third parties shall not apply, even if DWT does not separately object to their application in individual cases. Even if DWT refers to a letter that contains or refers to the terms and conditions of the Principal or a third party, this shall not constitute an agreement with the validity of those terms and conditions.

### **§ 2 Offers, Conclusion of Contract, Performance Data, Information, Written Form**

- 2.1. All oral, telephonic and written offers of DWT are subject to change and non-binding unless they are expressly marked as binding or contain a specific acceptance period. Orders placed or offers made shall only become binding upon written confirmation by DWT.
- 2.2. The Principal shall be bound to orders for 4 weeks from receipt by DWT (§§ 147, 148 BGB).
- 2.3. The contract shall only be concluded by a written order confirmation or the delivery by DWT.
- 2.4. Supplements, amendments or collateral agreements shall only be valid if confirmed in writing by DWT.
- 2.5. Insofar as written form is required in these General Terms and Conditions of Sale, Delivery and Payment, this shall also be deemed to have been complied with if a declaration is made by fax or in electronic form (e-mail).
- 2.6. The written order confirmation by DWT shall be decisive for the scope of delivery.
- 2.7. Information provided by DWT regarding the subject matter of the delivery or service (e.g. dimensions, weights, utility values, load-bearing capacity, application possibilities, tolerances, specifications as well as other technical data and performance data) as well as the presentation thereof (e.g. drawings and illustrations) shall only be approximately authoritative unless the usability for the contractually intended purpose requires exact conformity. They are not guaranteed quality features, but descriptions or identifications of the delivery or service. Deviations that are customary in the trade and deviations that occur due to legal regulations or represent technical improvements as well as the replacement of components by equivalent parts are permissible insofar as they do not impair the usability for the contractually intended purpose. In all other cases, only the warranties expressly granted by DWT in writing shall be authoritative.
- 2.8. All data and information provided by DWT regarding the suitability and application of its goods are given to the best of its knowledge based on DWT's testing and experience. They are non-binding unless expressly guaranteed in writing.
- 2.9. DWT shall retain ownership or copyright of all offers and cost estimates submitted by it as well as drawings, illustrations, calculations, brochures, catalogs, models, tools and other documents and aids made available to the Principal. Without the express consent of DWT, the Principal shall not make these items accessible to third parties, either as such or in terms of content, disclose them, use them himself or through third parties or reproduce them. Upon DWT's request, he shall return these items to DWT in their entirety and destroy any copies that may have been made if they are not used by him in the ordinary course of business.

are no longer required or if negotiations do not lead to the conclusion of a contract.

### § 3 Prices and payment

- 3.1. The prices apply to the scope of services and deliveries listed in the order confirmations. Additional or special services will be charged separately.
- 3.2. All prices are in EURO ex works unless otherwise agreed.
- 3.3. Payments shall be made free DWT's payment office or to the bank account specified by DWT.
- 3.4. Unless otherwise agreed in writing between the parties, invoices are payable immediately and without deduction at the latest 21 days after the invoice date. The date of payment shall be determined by the date of receipt by DWT. Checks shall only be deemed payment once they have been cashed. If the agreed terms of payment are not met, interest on arrears shall be payable without reminder from the 31st day after the invoice date. The right to claim higher interest and further damages in the event of default remains unaffected.
- 3.5. In the event of non-compliance with the terms of payment, DWT shall be entitled to perform or render outstanding deliveries or services only against advance payment or provision of security if, after the conclusion of the contract, it becomes aware of circumstances which are likely to substantially reduce the creditworthiness of the Principal and as a result of which the payment of the outstanding claims of DWT by the Principal from the respective contractual relationship (including from other individual orders to which the same framework agreement applies) is jeopardized.
- 3.6. The Customer shall only have the right to withhold payments or to offset them against counterclaims to the extent that its counterclaims are undisputed, acknowledged or have been legally established.
- 3.7.

Handling charges for repair of defective tools	
Known tools without error description	35 €
Unknown tools without error description or accompanying documents	60 €
Minimum order value (100 €)	
If the order value is less than €100, the difference to the minimum order value is automatically settled.	

These flat rates are charged unless otherwise agreed.

- 3.8 A restocking fee of 20% of the list price will be charged for returned products. This will be charged separately.
- 3.9 DWT's cost estimates can deviate by up to 10% without preparing separate cost estimates. This ensures that simple small parts can be installed quickly and without red tape.

### § 4 Delivery and delivery time

- 4.1. Unless otherwise agreed, deliveries shall be made ex works.
- 4.2. Deadlines and dates for deliveries and services promised by DWT shall always be approximate unless a fixed deadline or date has been expressly promised or agreed. If shipment has been agreed, delivery periods and delivery dates shall refer to the time of handover to the forwarding agent, carrier or other third party commissioned with the transport.
- 4.3. Delivery periods shall commence on the date of the order confirmation, but not before all agreed or otherwise required prerequisites have been fulfilled by the Principal and all details of the delivery and execution have been clarified. If these prerequisites are not fulfilled in time, the delivery periods shall be extended accordingly and the Principal shall reimburse DWT for all additional costs and expenses arising from this delay, unless DWT is responsible for the delay.

4.4. Agreed delivery periods and dates shall be deemed to have been complied with if the delivery item has left DWT's warehouse or the manufacturer's plant by the expiry of such periods and dates or, in the case of a corresponding transport agreement, the readiness for dispatch has been notified to the Principal and the delivery item is made available for collection.

4.5. DWT shall be entitled to make partial deliveries if

- the partial delivery is usable for the customer within the scope of the contractual intended purpose,
- the delivery of the remaining ordered goods is ensured and
- the Principal does not incur any significant additional expenses or costs as a result thereof (unless DWT agrees to bear such costs).

Each partial delivery is considered an independent delivery.

4.6. DWT shall not be liable for impossibility of delivery or for delays in delivery insofar as these have been caused by force majeure or other events unforeseeable at the time of conclusion of the contract (e.g. operational disruptions of any kind, difficulties in the procurement of materials or energy, transport delays, strikes, lawful lockouts, shortage of labor, energy or raw materials, difficulties in obtaining necessary official permits, official measures or the failure of suppliers to deliver or to deliver correctly or on time) for which DWT is not responsible. If such events make the delivery or service considerably more difficult or impossible for DWT and the hindrance is not only of temporary duration, DWT shall be entitled to withdraw from the contract. In the event of hindrances of temporary duration, the delivery or service deadlines shall be extended or the delivery or service deadlines shall be postponed by the period of the hindrance plus a reasonable start-up period. Insofar as the Principal cannot reasonably be expected to accept the delivery or service as a result of the delay, he may withdraw from the contract by immediate written declaration to DWT.

4.7. DWT shall inform the Principal without undue delay of the non-availability of the delivery item or a delay in delivery and, in the event of withdrawal, shall immediately reimburse or charge the Principal for the corresponding consideration received.

4.8. If DWT is in default with a delivery or service or if a delivery or service becomes impossible for it, for whatever reason, DWT's liability for damages shall be limited in accordance with § 8 of these General Terms and Conditions of Sale, Delivery and Payment.

4.9. If the Principal suffers damage due to a delay for which DWT is responsible, in particular in the case of a delivery date firmly agreed with DWT, the Principal shall be entitled to claim compensation. In the event of slight negligence, the compensation shall amount to  $\frac{1}{2}$  / 100 of the partial or total net order which could not be put into operation in due time due to the delay for each full week of the missed deadline, but in total not more than 5 / 100.

4.10. Claims for damages of the Principal exceeding the limits specified in Clause 4.9 shall be excluded in all cases of delayed delivery. This shall also apply after the expiry of any deadline set to DWT for the delivery. The Principal shall only be entitled to withdraw from the Contract due to delay if no delivery has been made within a reasonable period of time granted to DWT, the compensation for delay referred to in Clause 4.9 has been exhausted and DWT does not voluntarily pay lump-sum damages in addition to the compensation for delay referred to in Clause 4.9 within ten (10) working days after receipt of the Principal's notice of withdrawal.

4.11. If the shipment is delayed due to circumstances for which the Principal is responsible, the Principal shall be charged the storage costs incurred by third parties as of the 14th day, calculated from the day of notification of readiness for shipment, and  $\frac{1}{2}$  / 100 of the invoice amount of the items to be stored per elapsed week in the case of storage at DWT. The assertion and proof of further or lower storage costs shall remain reserved.

4.12. DWT shall be entitled to otherwise dispose of the delivery item after granting a grace period that expires fruitlessly and to supply the Principal with a reasonable extension of the deadline.

## **§ 5 Place of performance, shipment, packaging, transfer of risk, acceptance**

5.1. The place of performance for all obligations arising from the contractual relationship shall be the headquarters of DWT GmbH, unless otherwise specified.

5.2. The mode of shipment and the packaging shall be subject to the dutiful discretion of DWT, unless otherwise specified.

5.3. If the delivery item is shipped at the request of the Customer, the risk of accidental loss and accidental deterioration shall pass to the Customer upon handover of the delivery item (whereby the start of the

loading process shall be decisive) to the forwarding agent, carrier or other third party designated to carry out the shipment, regardless of whether the shipment from the place of performance or who bears the shipping costs. This shall also apply if DWT uses its own means of transport.

- 5.4. The shipment shall be insured by DWT against theft, breakage, transport, fire and water damage or other insurable risks only at the express request of the Principal and at his expense.
- 5.5. If the delivery item is ready for dispatch and the dispatch or collection is delayed due to a circumstance the cause of which lies with the Principal, the risk shall pass to the Principal from the day on which the delivery item is ready for dispatch and DWT has notified the Principal thereof.
- 5.6. Insofar as acceptance is to take place, the object of sale shall be deemed to have been accepted if
  - the delivery is completed,
  - DWT has notified the Principal thereof with reference to the deemed acceptance pursuant to this paragraph 6 and has requested acceptance,
  - six working days have passed since delivery or the Customer has started to use the purchased item (e.g. has put the delivered equipment into operation) and in this case six working days have passed since delivery or installation, and
  - the Customer has failed to take delivery within this period for a reason other than a defect notified to DWT which makes the use of the purchased item impossible or significantly impairs it.
- 5.7. The Principal may only refuse to accept deliveries if the deliveries are obviously and significantly defective and the Principal notifies DWT of this in writing within three days after delivery.

## **§ 6 Liability for defects**

DWT shall be liable to the Principal for material defects including the absence of expressly warranted characteristics or the non-compliance with guarantees as follows:

- 6.1. The warranty period shall be one year from delivery or, if acceptance is required, from acceptance. The above period shall not apply if longer periods are prescribed by law (§ 438 para. 1 no. 2 BGB - buildings and things used for a building / § 479 para. 1 BGB - right of recourse and § 634 a para. 1 BGB - construction defects). In deviation from sentence 1, the statutory periods shall also apply in the case of claims under the Product Liability Act and in the case of intentional or fraudulent conduct.
- 6.2. In the event of the sale of used goods, no warranty shall be granted. This shall not apply if DWT has fraudulently concealed defects or a certain condition was guaranteed.
- 6.3. Unless expressly agreed otherwise, the periods pursuant to Clause 6.1 shall apply if the delivered product is used in single-shift operation.
- 6.4. The delivered items shall be carefully inspected immediately after delivery to the Principal or to the third party designated by the Principal. They shall be deemed to have been approved if DWT has not received a written notice of defects with regard to obvious defects or other defects which were recognizable during an immediate, careful inspection within seven working days after delivery of the delivery item or otherwise within seven working days after discovery of the defect or any earlier point in time at which the defect was recognizable for the Principal during normal use of the delivery item without closer inspection.
- 6.5. In the event of a justified complaint, the defective product shall, at DWT's discretion and at DWT's expense, be
  - to be sent to DWT for repair and subsequent return or
  - the Client holds the defective product ready and service personnel from DWT are sent to the Client to carry out the repair.

In the event of failure, i.e. impossibility, unreasonableness, refusal or unreasonable delay of the repair or replacement delivery, the customer may withdraw from the contract or reduce the purchase price appropriately.

- 6.6. If the Principal requests that rectification work be carried out at a location determined by him, DWT may comply with this request, whereby replaced parts shall not be charged, while working time and travel expenses shall be paid by the Principal at reasonable standard rates.

- 6.7. If a defect is due to the fault of DWT, the Principal shall be entitled to claim damages under the conditions stipulated in § 8.
- 6.8. In case of defects of components of other manufacturers which DWT cannot remedy for licensing or factual reasons, DWT shall, at its option, assert its warranty claims against the manufacturers and suppliers for the account of the Principal or assign them to the Principal. Warranty claims against DWT shall only exist in the case of such defects under the other conditions and in accordance with these General Terms and Conditions of Delivery if the legal enforcement of the aforementioned claims against the manufacturer and supplier was unsuccessful or is futile, for example due to insolvency. During the duration of the legal dispute, the limitation period of the relevant warranty claims of the Principal against DWT shall be suspended.
- 6.9. The warranty shall not apply if the Principal modifies the delivery item or has it modified by a third party without the consent of DWT and the rectification of the defect becomes impossible or unreasonably difficult as a result. In any case, the Principal shall bear the additional costs for the rectification of defects resulting from the modification.
- 6.10. If DWT replaces parts with material defects by way of rectification, such parts shall become the property of DWT after replacement.
- 6.11. No warranty is assumed for damages that have occurred after the transfer of risk for the following reasons:
- natural wear and tear or wear and tear in excess of normal consumption;
  - unsuitable, improper use;
  - faulty, unsuitable or negligent handling;
  - faulty assembly or commissioning by the customer or third parties;
  - in the event of incorrect or negligent handling of the delivery item, in particular with regard to these operating instructions;
  - in the event of excessive stress;
  - in the event of the use of unsuitable operating materials, in particular in the event of the use of compressed air and replacement materials which have not been prepared in accordance with the specifications in the operating instructions, including spare parts or accessories which are not original to the manufacturer, if the damage is due to this cause. In these cases, the lack of causation must be proven by the customer;
  - external influences which are not assumed under the contract.

Furthermore, claims for defects shall not exist in the case of only insignificant deviations from the agreed quality, insofar as they do not impair the usability for the contractually intended purpose.

Any improper modifications or repair work carried out by the Principal or third parties without the prior approval of DWT shall void the liability for the consequences resulting therefrom.

- 6.12. DWT shall be given the opportunity to remedy the defect within a reasonable period of time. Only in urgent cases of danger to operational safety, of which DWT must be informed immediately, or if DWT is in default with the rectification of the defect, the Customer shall have the right to rectify the defect itself or have it rectified by third parties and to demand reasonable compensation for its costs from DWT.
- 6.13. If the subsequent performance fails, the Customer may - without prejudice to the rights under § 8 - withdraw from the contract or reduce the remuneration. The client cannot demand compensation for futile expenses.
- 6.14. Only the Customer shall be entitled to claims against DWT due to defects and such claims shall not be assignable.

## **§ 7 Property rights**

- 7.1. DWT shall warrant that the delivery item is free of industrial property rights or copyrights of third parties. Each Party shall notify the other Party in writing without undue delay if claims are asserted against it due to the infringement of such rights.
- 7.2. In the event that the delivery item is subject to an industrial property right or copyright of a third party, DWT shall, at its discretion and at its expense, modify or replace the delivery item in such a way that the rights of third parties are no longer infringed but the delivery item continues to fulfill the contractually agreed functions, or shall procure the right of use for the Principal by concluding a license agreement. If the Supplier fails to do so within a reasonable period of time, the Customer shall be entitled to rescind the contract or to reduce the purchase price by a reasonable amount.

reduce. Any claims for damages by the customer shall be subject to the limitations of § 8 of these terms and conditions.

- 7.3. In the event of infringements of rights by products of other manufacturers delivered by DWT, DWT shall, at its option, assert its claims against the manufacturers and upstream suppliers for the account of the Principal or assign them to the Principal. In such cases, claims against DWT shall only exist if the legal enforcement of the aforementioned claims against the manufacturers and upstream suppliers was unsuccessful or is futile, for example due to insolvency.

## **§ 8 Liability for damages due to fault**

- 8.1. The liability of DWT for damages, irrespective of the legal grounds, in particular due to impossibility, delay, defective or incorrect delivery, breach of contract, breach of duties during contractual negotiations and tort, shall be limited in accordance with the provisions of this § 8, insofar as fault is relevant in each case.
- 8.2. DWT shall not be liable in case of simple negligence, unless it is a breach of material contractual obligations. Material contractual obligations are the obligation to deliver the delivery item free of material defects in due time as well as consulting, protection and care obligations which are intended to enable the Principal to use the delivery item in accordance with the contract or which are intended to protect the life and limb of the Principal's personnel or to protect the Principal's property from significant damage.
- 8.3. Insofar as DWT is liable for damages on the merits pursuant to Section 8.2, this liability shall be limited to damages which DWT foresaw as a possible consequence of a breach of contract at the time of the conclusion of the contract or which it should have foreseen by exercising due care. Indirect damages and consequential damages which are the consequence of defects of the delivery item shall furthermore only be compensable insofar as such damages are typically to be expected when using the delivery item as intended.
- 8.4. The above exclusions and limitations of liability shall apply to the same extent in favor of the organs, legal representatives, employees and other vicarious agents of DWT.
- 8.5. Insofar as DWT provides technical information or acts in an advisory capacity and this information or advice is not part of the contractually agreed scope of services owed by DWT, this shall be done free of charge and to the exclusion of any liability.
- 8.6. The limitations of liability of this § 8 do not apply
- in the event of gross negligence;
  - in case of injury to life, body or health;
  - in the event of culpable breach of essential contractual obligations, insofar as the achievement of the purpose of the contract is jeopardized, with regard to the foreseeable damage typical for the contract;
  - in cases where liability is assumed under the Product Liability Act for defects in the delivery item, for personal injury or property damage to privately used items;
  - in the absence of characteristics which have been expressly warranted, if the purpose of the warranty was to protect the customer against damage which did not occur to the delivery item itself;
  - in the case of defects which have been fraudulently concealed or the absence of which DWT has guaranteed.

## **§ 9 Retention of title**

- 9.1. The goods delivered by DWT to the Principal shall remain the property of DWT until full payment of all claims against the Principal arising from the business relationship, including future claims arising from contracts not concluded at the same time or later. The goods as well as the goods covered by the retention of title taking their place according to this clause shall hereinafter be referred to as goods subject to retention of title.
- 9.2. The Customer shall store the Reserved Goods free of charge for DWT.
- 9.3. The Principal shall be obliged to treat the Reserved Goods with care and to insure them at its own expense against fire, water and theft in the amount of the replacement value of the purchased goods. The Principal shall provide DWT with written evidence of the conclusion of the aforementioned insurance. DWT shall also be entitled to insure the delivery item at the expense of the Principal.
- 9.4. The Customer shall be entitled to process and sell the goods subject to retention of title in the ordinary

course of business until the case of realization (clause 9.9) arises. Pledges and Assignments by way of security are not permitted.

- 9.5. If the Reserved Goods are processed by the Principal, it is agreed that the Principal already now assigns to DWT as security its future ownership or co-ownership (fractional ownership) of the newly created item in the ratio of the value of the Reserved Goods to the value of the newly created item. If the Reserved Goods are combined or inseparably mixed with other items to form a uniform item and if one of the other items is to be regarded as the main item, DWT shall, insofar as the main item belongs to it, transfer to the Principal the co-ownership in the uniform item on a pro rata basis in the ratio stated in sentence 1.
- 9.6. In case of resale of the Reserved Goods, the Customer already now assigns to DWT by way of security the resulting claim against the acquirer - in case of co-ownership of DWT in the Reserved Goods pro rata according to the co-ownership share. The same shall apply to other claims which take the place of the Reserved Goods or otherwise arise with regard to the Reserved Goods, such as e.g. insurance claims or claims in tort in case of loss or destruction. DWT revocably authorizes the Principal to collect the claims assigned to DWT in its own name. DWT may revoke this collection authorization only in the event of liquidation.
- 9.7. If third parties gain access to the reserved goods, in particular by seizure, confiscation or other dispositions, the Principal shall immediately inform them of DWT's ownership and inform DWT thereof in order to enable DWT to enforce its ownership rights. If the third party is not in a position to reimburse DWT for the judicial or extrajudicial costs incurred in this connection, the Principal shall be liable to DWT for this.
- 9.8. DWT shall release the Reserved Goods as well as the items or claims replacing them upon request at its discretion if their value exceeds the amount of the secured claims by more than 50%.
- 9.9. If the Customer does not fulfill an obligation towards DWT on time or if circumstances arise which make the rights of DWT appear to be at risk - e.g. deterioration of the Customer's assets - DWT shall be entitled to demand the return of the Reserved Goods without further ado and/or to withdraw from the contract. The Principal shall then be obliged to surrender the goods. In these cases, the Principal shall be obliged to immediately and without being asked to do so, provide DWT with an invoice for the Reserved Goods as well as the assigned claims arising therefrom.
- 9.10. If DWT demands the surrender of the Reserved Goods, DWT shall be entitled to realize them after prior notice by sale to third parties or by purchase at the dealer's purchase price, which shall be determined by a publicly appointed expert at the request of the Principal. In the case of sale to third parties, the proceeds shall be credited against the Principal's liabilities after deduction of expenses incurred and a flat-rate distribution fee in the amount of 15 / 100 of the realization proceeds.

## **§ 10 Jurisdiction / Place of Performance**

- 10.1. The place of performance for payments and the exclusive place of jurisdiction - also for actions in document and bill of exchange proceedings - for both parties and for all present and future claims arising from the business condition shall be the head office of DWT or - at its option - the registered office of the branch office which concluded the contract.
- 10.2. The relations between DWT and the Principal shall be governed exclusively by the laws of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG) shall not apply.
- 10.3. Insofar as the contract or these General Terms and Conditions of Sale, Delivery and Payment contain regulatory gaps, those legally effective regulations shall be deemed agreed to fill these gaps which the contracting parties would have agreed upon according to the economic objectives of the contract and the purpose of these General Terms and Conditions of Sale, Delivery and Payment if they had known about the regulatory gap.